Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

JERALD D. SAUNDERS,
Petitioner,

v.

UNITED STATES OF AMERICA

On Petition for Writ of Certiorari
To The United States Court of Appeals, Eleventh Circuit

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

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[1996 Bankr. LEXIS 1928]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

JERALD SAUNDERS, Debtor.

CASE NO. 94-23489-BKC-RBR
_____/

JERALD SAUNDERS, Plaintiff,

v.

UNITED STATES OF AMERICA, Defendant.

ADVERSARY NO. 95-0475-BKC-RBR-A
_____/

MEMORANDUM DECISION AND ORDER

THIS MATTER came before the Court for trial on September 22, 1995 upon the Debtor's Complaint to Avoid Liens and Determine Dischargeability of Income Taxes. The Court, having heard the testimony, examined the evidence presented, observed the candor and demeanor of the witnesses, and considered the arguments of counsel, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Debtor, Jerald Saunders, first filed for bankruptcy relief under Chapter 7 of the Bankruptcy Code on July 6, 1994. As discussed later herein, that case was eventually

dismissed at the request of the Debtor, and the Debtor's second Chapter 7 petition was filed on September 9, 1994. At the time of the Debtor's first petition, the Debtor owed the IRS over $ 500,000.00 in delinquent federal income taxes, interest, and penalties for [*2] the years 1978, 1979, 1983, 1984, 1985, 1986, and 1987. These delinquencies are the subject of this adversary proceeding.

The Debtor was a long-term pilot for Pan American Airways ("Pan Am") who lost his job after Pan Am filed for bankruptcy relief in late 1991. As an employee of Pan Am, the Debtor had an interest in two ERISA Title I qualified pension plans. During the course of Pan Am's bankruptcy proceedings, the Debtor's interests in those pension plans were terminated. Consequently, in March 1993, the Debtor rolled over his funds from the pension plans into individual retirement accounts (IRA) held at Smith Barney Shearson, Inc. ("Smith Barney"). The Debtor has claimed an exemption in these funds on his Schedule C, and no objection has been filed to the exemption. Therefore, the funds in the Debtor's IRA accounts are generally exempt from the claims of the trustee and general creditors.

The IRS recorded two Notices of Federal Tax Lien with respect to the Debtor's tax delinquencies. The first one was filed in Washington, D.C. on September 20, 1991. The other one was recorded in the public records of Broward County, Florida on September 8, 1994, in connection with the dismissal [*3] of the original Chapter 7 and the refiling of the second Chapter 7. Curiously, no notices were recorded in the time period between 1992 and September 1994.

The IRS mailed a Notice of Levy to Smith Barney on June 9 or 10, 1994. Smith Barney received the notice on June 14, 1994. At all times before the levy, Smith Barney held

more funds in the Debtor's IRA accounts than the sum stated in the Notice of Levy. The notice instructed Smith Barney to hold the funds for 21 days from the date of receipt of the notice, and the funds were be released to the IRS on July 6, 1994. However, the Debtor's bankruptcy petition was filed on July 6, 1994 and the automatic stay prohibited Smith Barney from releasing the funds.

In his Complaint, the Debtor seeks a determination that his entire obligation to the IRS is dischargeable except for the taxes, interest and penalties for the 1986 tax year. The IRS does not dispute that the obligations for the years 1978, 1979, and 1987 are dischargeable. However, the IRS maintains that the Debtor may not discharge the debt owed for 1983, 1984, and 1985.

The Debtor also seeks the determination that the notices of federal tax lien filed by the IRS were ineffective. [*4] As stated above, the first notice of federal tax lien was filed on September 20, 1991 in Washington, D.C. The Debtor claims that he was a resident of Florida at that time and, therefore, the filing in Washington, D.C. was not proper.

In support of its contention that Washington, D.C. was the proper jurisdiction for filing the notice, the IRS maintains that the documents used by the IRS to locate the Debtor indicated that the Debtor was residing outside of the country. It also argues that even if the Debtor was living in Florida in September of 1991, the Debtor never provided the IRS with a change of address.

The Debtor testified that he was based in Berlin, Germany for a period of time but was transferred by Pan Am to Miami, Florida in early 1991, and that he generally resided at the same address in Ft. Lauderdale, Florida from the date of the Pan Am transfer to the date of the

trial.

At trial, Cyd Sykes, an IRS Revenue Officer testified as to the IRS source documents used by the IRS to determine the Debtor's last known address. She testified that the documents listed an international address, an address in Jamaica, New York, an address in Kent, Connecticut, and one document listed [*5] the Debtor's current address in Fort Lauderdale, Florida.

Upon review of the evidence, I find that the Debtor has been a resident of Florida since he was reassigned to Miami by Pan Am in April 1991. At that time, he was registered in a training course and filed a W-4 with his employer listing his Florida address. The Debtor has spent a great majority of his time traveling with Pan Am and "living out of a suitcase," but in 1991 the Debtor spent more than 100 days in Florida. He registered to vote in Florida before the 1992 general election, and in early 1993 he filed his 1989, 1990, and 1991 tax returns using the Florida address. The IRS has not produced any evidence that the Debtor claimed any residency other than Florida after April 1991, or that Mr. Saunders spent more time anywhere other than Florida.

I also find that several grounds existed for the IRS to question the Debtor's actual address in September 1991, but neglected to do so. While the IRS was aware that the Debtor was assigned to employment overseas since the late 1980's, several source documents on file with the IRS contained domestic addresses. In addition, when the IRS garnished the Debtor's wages beginning September [*6] 15, 1991, the IRS initially used a German Pan Am address but was unsuccessful. Thereafter, the IRS re-noticed the levy to Pan Am-New York. Considering these factors, the IRS should have questioned whether the Debtor still resided overseas.

It was conceded that the Debtor's first Chapter 7 petition was filed for the purpose of preventing the IRS from successfully levying upon the Debtor's IRA accounts. However, after that petition was filed the Debtor determined that the filing on July 6, 1994 would not allow the Debtor to discharge in the Bankruptcy all of the past due taxes pursuant to 11 U.S.C. §§ 507(a)(8)(A)(ii) and 523(a)(1)(A). Therefore, on August 26, 1994, the Debtor sought to dismiss the first bankruptcy and immediately thereafter file a second bankruptcy which would enable the Debtor to discharge virtually all of the past due taxes. This matter was noticed for hearing on September 8, 1995. It was as a result of the Debtor's actions and the dismissal of the first bankruptcy petition that the second notice of levy to which the Debtor objects was filed in Broward County, Florida on September 8, 1994. The Court's ruling authorizing dismissal of the case was read into the record [*7] at the time of the hearing, or approximately 10-11:00 a.m. The written Order (the "Dismissal Order") was date-stamped by the Clerk's office at 2:01 p.m. and docketed at 4:09 p.m. that same day.

Immediately following the hearing on the Debtor's Motion to Dismiss, IRS counsel instructed a waiting IRS Revenue Officer to file a notice of federal tax lien in Broward County, Florida. The notice was date-stamped at 2:32 p.m. on September 8, 1994 at the Broward County State Courthouse. The Debtor maintains that since the notice was filed prior to the actual docketing of the Dismissal Order, the notice was filed in violation of the automatic stay and is thereby ineffective.

The Court will address each of the above issues in turn below.

CONCLUSIONS OF LAW

The Notice of Federal Tax Lien Filed on September 8, 1994 Violated the Automatic Stay Provisions of § 362

Federal Rule of Bankruptcy Procedure 9021 provides that "[a] judgment is effective when entered as provided in Rule 5003." Rule 5003 requires the Clerk to enter on the official docket "each judgment, order, and activity in that case." The term "judgment" as used in this rule means "any appealable order". F.R.B.P. 9001(7). [*8] Therefore, any appealable order becomes effective once entered on the Court's official docket.

The Dismissal Order is an appealable final order. Consequently, following the plain meaning of the above rules, the notice of federal tax lien, which was filed prior to the actual docketing of the Dismissal Orders, was filed when the automatic stay was still in effect. See, In re Weston, 101 B.R. 202 (Bankr. E.D. Ca. 1989) (automatic stay terminated when dismissal order entered on docket), aff'd, 123 B.R. 466 (9th Cir. BAP 1991). See also, In re Beatty, 162 B.R. 853 (9th Cir. BAP 1994) (effective and operative date of order is date of entry into docket); In re Rebeor, 89 B.R. 314 (Bankr. N.D.N.Y. 1988) (oral ruling converting case was not effective until entered on docket by clerk).

The United States argues that such a result would be unjust as bankruptcy practitioners often rush copies of date-stamped petitions to the IRS to stop collection activities. The government argues that the Debtor cannot rely on the act of filing to commence the automatic stay, but thereafter rely on the act of entry on the docket to lift the same stay. The IRS maintains that if the Debtor's argument [*9] is accepted, "the IRS reasonably could contend that it need not stop collection activity until receiving a copy of a docket entry sheet showing the

filing time and date of a bankruptcy petition or order. . . ."

The government's position is incorrect. Rule 9021 only applies to judgments and final orders, not to petitions. Section 301 of the Code specifically provides that a voluntary petition is effective upon filing. Similarly, Section 362(a) provides that the filing of a petition operates as an automatic stay. The IRS may find this disparate treatment unfair, but such treatment is mandated by the Code.

The United States also refers the Court to a recent decision by the Bankruptcy Court for the District of Massachusetts, Eastern Division, for the proposition that formal entry on the docket of an oral ruling is insignificant. Roy v. Roy, et. al., Case No. 93-1040 (October 2, 1995). In Roy, the Court affirmed monetary sanctions against an attorney for failing to disclose an oral order of dismissal in a related case. The Court found that the attorney should have disclosed the prior oral rulings, and the fact that a "final order had not been entered on the docket did [*10] not obviate [the attorney's] obligation to ensure that full disclosure was made." Roy, Case No. 93-1040, slip. op. at 4. However, while the Court found that the attorney should have disclosed the existence of the oral ruling, the Court did not address the effectiveness of the order prior to it being docketed. I also find this case factually distinguishable as the issue in Roy was the appropriateness of Rule 11 sanctions for an attorney who filed a motion in the Massachusetts bankruptcy court requesting sanctions for violation of the automatic stay without disclosing that the bankruptcy court in California had orally dismissed her client's case and denied her employment. The undisclosed facts were critical to the outcome of the attorney's motion. In contrast, sanctions pursuant to Rule 9011 are not at issue in this case, and there has been no

allegation that any of the parties herein misled the Court.

The Notice of Federal Tax Lien filed in Washington D.C. on September 20, 1991 was Ineffective

Pursuant to 26 U.S.C. § 6323(f)(2)(B) the proper location for filing a notice of federal tax lien for personal property is the residence of the taxpayer at the time the notice [*11] is filed. By statute, "the residence of a taxpayer whose residence is without the United States is deemed to be in the District of Columbia." § 6323(f)(2). Consequently, the 1991 lien notice filed in Washington, D.C. is valid against a hypothetical bona fide creditor and the Debtor only if the Debtor was a resident of Washington, D.C. or a resident "without the United States" at the time the lien was filed.

As stated above, the IRS maintains that the filing in Washington, D.C. was proper based on its knowledge of the Debtor's whereabouts. The government contends that as of September 20, 1991, the information possessed by the IRS indicated that the Debtor was living abroad. As such, the IRS maintains that it cannot be expected to know the undisclosed location of a Debtor who has moved without advising them, and refers the Court to several cases to support the proposition that the taxpayer's "last known address" is controlling.

I have reviewed the cases cited by the IRS and I find them distinguishable from the matter presently before the Court. Each of the cited cases involves the determination of a taxpayer's address for the purpose of mailing a notice of tax deficiency. The deficiency [*12] notice statute, 26 U.S.C. § 6212, specifically provides that the "last known address" is the address to be used for such purposes. In contrast, the lien notice statute at issue in this case does not provide that a taxpayer's "last known address" is to be used for the filing of a notice of

federal tax lien. In fact, it has been held that § 6323(f) does not generally permit the IRS to file its notice at the place of the taxpayer's "last known address," even if IRS does not know the taxpayer's current address. For instance, in Corwin Consultants, Inc. v. Interpublic Group of Companies, Inc., 512 F.2d 605 (2d Cir. 1975), the Second Circuit stated

> A principal purpose of the 1966 Tax Lien Act in using residence filing was to "increase the likelihood that creditors, generally, will receive notice as to the taxpayer's standing with the Government."

Id. at 610. As such, the Court recognized that "a last known address interpretation [of § 6323] might thus put creditors of the taxpayer at the mercy of whatever records the IRS office involved happens to possess," and acknowledged that it may even be impossible under the law for the IRS to properly perfect its [*13] lien in certain cases, such as where the taxpayer has no definable address. Id.

Furthermore, even if the Court assumes that the taxpayer's "last known address" is controlling, when the IRS holds information which indicates that the address on the taxpayer's last filed tax return may be incorrect, it is under a duty to exercise "reasonable diligence" to ascertain the correct address. In re Bell, 166 B.R. 478, 480 (Bankr. S.D. Fla. 1994), aff'd, 183 B.R. 650 (S.D. Fla. 1995). According to the testimony of Ms. Sykes, the source documents used by the IRS to determine the Debtor's whereabouts contained numerous addresses, both within the United States and abroad. Considering these numerous addresses, I find that the IRS had an obligation to attempt to ascertain which address, if any,

was correct. This obligation could have been satisfied by simply sending an address information request form to the addresses listed on the source documents, to the Debtor's employer, or to the Debtor's accountant. However, since the IRS did not make any such inquiries, I find that the IRS did not exercise reasonable diligence when it filed the notice in Washington, D.C.

Finally, I note that between [*14] September 20, 1991 and June 8, 1994, the date of the Debtor's second petition, the Debtor filed several tax documents with the IRS which listed the Debtor's Ft. Lauderdale address. For example, when the Debtor changed his address to Ft. Lauderdale, Florida in early 1991, he gave Pan Am a W-4. Although the IRS may not have received a copy of this W-4, they did receive a copy of the W-2 which was generated by Pan Am in 1992 for the 1991 tax year. In addition, the Debtor's tax returns for 1989, 1990 and 1991, each listing the Florida address, were filed in early 1993. At that time, the IRS could have easily protected its claim by filing a notice in Florida, yet it waited until June of 1994 to do so. The IRS has provided no reasonable explanation for its delinquent actions.

Accordingly, for all of the reasons stated above, I find that the filing of the notice in Washington, D.C. was invalid.

The Debtor is Entitled to Discharge the Assessed and Unpaid Federal Income Tax Liabilities for Years 1978, 1979, and 1987

Sections 507(a)(8)(A)(ii) and 523(a)(1)(A) of the Bankruptcy Code provide that prepetition indebtedness for income taxes is non-dischargeable if the taxes were "assessed [*15] within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such

assessment was pending, before the date of the filing of the petition." § 507(a)(8)(A)(ii).

The Debtor had an offer in compromise pending for 476 days. Therefore, to determine whether the Debtor's unpaid tax liability for a given year is dischargeable, the Court must count the number of days between the date of assessment and the date of the Debtor's first petition, July 6, 1994, and subtract 506 days (476 plus 30). The tax year is dischargeable if the result for any given year is greater than 240.

The calculations for the years at issue are as follows:

Year	# of Days			
1978	2,609 - 506	=	2,103	Dischargeable
1979	2,609 - 506	=	2,103	Dischargeable
1983	714 - 506	=	158	Non-Dischargeable
1984	738 - 506	=	232	Non-Dischargeable
1985	692 - 506	=	186	Non-Dischargeable
1986	500 - 506	=	-6	Non-Dischargeable
1987	771 - 506	=	265	Dischargeable

The Debtor argues that the above calculations are incorrect. He asserts that the automatic stay in the Debtor's first bankruptcy did not toll the running of the [*16] limitations period for the delinquent taxes. Therefore, the Debtor argues that the calculation must be conducted from the date of the Debtor's second petition, September 9, 1994. In that case, only the delinquent taxes for 1986 would be non-dischargeable.

The relevant code sections are 11 U.S.C. § 108(c)[1] and 26 U.S.C. 6503(h).[2] Several courts have held that these provisions operate to extend the limitations periods provided in §§ 507(a)(8)(A)(ii) and 523(a) during the pendency of a debtor's bankruptcy case. In re Teeslink, 165 B.R. 708, 711 (Bankr. S.D. Ga. 1994). See also, In re Montoya, 965 F.2d 554 (7th Cir. 1992); In re Richards, 141 B.R. 751 (W.D. Okl. 1992), aff'd, 994 F.2d 763 (10th Cir. 1993); In re West, 137 B.R. 1012 (D. Or. 1992), aff'd, 5 F.3d 423 (9th Cir. 1993). However, the

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[1] Section § 108(c) provides:

> If applicable nonbankruptcy law . . . fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor . . . and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of . . . the end of such period, including an suspension of such period occurring on or after the commencement of the case. (emphasis added).

[2] Section 6503(h) provides:

> **Cases under title 11 of the United States Code.**
> The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or collection shall, in a case under title 11 of the United States Code, be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and -
>
> (1) for assessment, 60 days thereafter, and
> (2) for collection, 6 months thereafter.

plain language of the statute suggests that § 108(c) only applies to nonbankruptcy law. Therefore, since the time periods provided in §§ 507 and 523 are necessarily bankruptcy law, § 108(c) would not apply. [*17]

This plain language interpretation of § 108(c) was adopted by Judge Cohen in the Northern District of Alabama. In re Gore, 182 B.R. 293 (Bankr. N.D. Ala. 1995); In re Turner, 182 B.R. 317 (Bankr. N.D. Ala. 1995). In Gore and Turner, Judge Cohen recognized that

> Neither section 108(c) of the Bankruptcy Code nor section 6503(h) of the Internal Revenue Code mention the word "discharge," or refer to section 523 or section 507, or by their express terms purport to relate to or effect either the dischargeability or priority of taxes in bankruptcy, but instead, specifically apply to [*18] nonbankruptcy periods of limitation.

Gore, 182 B.R. at 299; Turner, 182 B.R. at 324. He also reasoned that had Congress intended the time period in §§ 507 and 523 to be suspended during the pendency of prior bankruptcy cases, Congress could have easily enacted such a provision in the Bankruptcy Code just as it had with respect to offers in compromise. 182 B.R. 293 at 302.

While Judge Cohen determined that §§ 108(c) and 6503(h) do not toll the time periods specified in §§ 507 and 523, he explained that under 11 U.S.C. § 105, the bankruptcy court may nevertheless exercise its equitable powers when it would be necessary to prevent prejudice to the IRS. As such, if the discharge of the debtor's

income taxes in a subsequently filed bankruptcy case would be inequitable, the Court may, for the purpose of determining the dischargeability of the debtor's income tax obligations, "add the time that the IRS was actually enjoined by the automatic stay in the prior bankruptcy case from proceeding against a debtor to the time period specified under § 507(a)(7)(A)(i). . . ." Id. at 314.

Having reviewed Judge Cohen's opinions and the cases finding the time periods in §§ 507 and 523 [*19] to be tolled during the pendency of a bankruptcy case, I find Judge Cohen's rulings more persuasive. Consequently, following the literal language of the Bankruptcy Code, only the Debtor's obligation for the 1986 tax year would be non-dischargeable. However, I find that such a result would unfairly prejudice the IRS.

The Debtor commenced his first bankruptcy to prevent Smith Barney from honoring the levy on the Debtor's IRA accounts. Had the Debtor not filed for bankruptcy on July 6, 1994, the IRS claims would have been paid in full. Once the Debtor filed his first petition, the automatic stay thereafter prevented the IRS from attempting to collect the delinquent taxes. The Debtor then dismissed his first petition and immediately filed another petition, attempting to discharge delinquent taxes not otherwise dischargeable in the first bankruptcy. If this Court holds that the time period for determining priority status and dischargeability of tax claims is not tolled during the Debtor's first bankruptcy case, the IRS will forever lose the ability to recover its taxes whereas the Debtor would effectively avoid payment on account of the first levy as well as discharge the underlying obligation, [*20] a result inconsistent with the purpose of the Bankruptcy Code. This Court will not allow the Debtor to use his first bankruptcy filing as both a sword and a shield.

Therefore, pursuant to the above, I find it necessary to

add to the 240-day reach back period the time that the IRS was enjoined, by reason of the automatic stay in the Debtor's first bankruptcy case, from pursuing its claim against the Debtor. Accordingly, based on the above calculations, the Debtor is only entitled to discharge the assessed and unpaid federal income tax liabilities for 1978, 1979 and 1987.

Penalties Attributable to Tax Debt Arising More than Three Years from Date of Petition are Dischargeable

Section 523(a)(7)(B) of the Bankruptcy Code provides that fines or penalties "imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition" are not discharged. In In re Burns, 887 F.2d 1541 (11th Cir. 1989), the Eleventh Circuit recognized that this section extends to tax penalties, even if the underlying tax is non-dischargeable.

In determining which tax penalties are dischargeable, it has been recognized that the relevant "transaction [*21] or event" the Court must look to is the date the tax was due. In re Leahey, 169 B.R. 96 (Bankr. D.N.J. 1994) (citing, Teeslink, 165 B.R. at 717). This is so because "penalties are incurred the first day that the tax payment or return is late." Leahey, 169 B.R. at 100. Accordingly, in this case, any penalties arising from the tax years prior to 1991 are discharged.[3]

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[3] The Debtor asserts that the penalties arising from all tax years before 1992 are discharged. However, the taxes for 1991 were not due until April 15, 1992. This is the transaction to which the Court must look, and it occurred within three years of the Debtor's petition.

ORDER

In accordance with the foregoing findings of fact and conclusions of law it is hereby ORDERED AND ADJUDGED as follows:

1. The relief requested in Count I of the Debtor's Complaint is hereby GRANTED. All liens for the delinquent taxes, penalties, and interest are avoided.

2. The relief requested in Count II of the Debtor's Complaint is GRANTED [*22] in part and DENIED in part. The Debtor's tax liability, along with interest and penalties assessed thereon, shall be discharged for the 1978, 1979, and 1987 tax years. The Debtor's tax liabilities for tax years 1983, 1984, 1985, and 1986 shall not be discharged.

3. The Debtor's liability for penalties arising from tax years prior to 1991 shall be discharged.

DONE AND ORDERED in chambers in the Southern District of Florida, this 26th day of January, 1996.

s/RAYMOND B. RAY, Judge
United States Bankruptcy Court

[240 B.R. 636; 1999 U.S. Dist. LEXIS 4664; 99-1 U.S. Tax Cas. (CCH) P50,445; 84 A.F.T.R.2d (RIA) 5875]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

In re:

JERALD D. SAUNDERS, Debtor,

_____/

JERALD D. SAUNDERS, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

CASE NO. 96-6236-CIV-DIMITROULEAS
_____/

FINAL ORDER AFFIRMING/REVERSING BANKRUPTCY COURT'S ORDER

THIS CAUSE is before the Court, pursuant to 28 U.S.C. § 158(a), on cross-appeals by the debtor, Jerald D. Saunders, and the United States of America, of a Memorandum Decision and Order, dated January 26, 1996, entered by United States Bankruptcy Judge Raymond B. Ray (hereinafter "Bankruptcy Order").[4] The Court has carefully considered the cross-appeals, [**2] has carefully reviewed the court file herein

[4] Saunders v. United States (In re Saunders), 1996 Bankr. LEXIS 1928, No. 94-23489- BKR-RBR, 1995 WL 865471 (Bankr. S.D. Fla. Jan. 26, 1996).

including the entire designation of record on appeal, and is otherwise fully advised in the premises.

I. BACKGROUND

This case arose from the Internal Revenue Service's ("IRS") attempt to collect unpaid federal tax liabilities of the debtor, a former pilot with Pan Am. The debtor owed federal income taxes for the 1978, 1979, 1983, 1984, 1985, 1986 and 1987 tax years. In April 1991, Pan Am reassigned the debtor from Germany back to the United States. On September 20, 1991, the IRS filed a notice of federal tax lien in Washington, D.C. with respect to the unpaid tax liabilities. The IRS filed the notice in Washington, D.C. because it believed that the debtor still resided outside of the United States.

In late 1991, Pan Am filed for bankruptcy relief. As a result, the debtor lost his job with Pan Am. As an employee of Pan Am, the debtor had an interest [**3] in two pension plans. During the course of Pan Am's bankruptcy proceedings, the debtor's interests in those pension plans were terminated. Consequently, in March 1993, the debtor rolled over his funds from the pension plans into individual retirement accounts (IRA) held at Smith Barney Shearson, Inc. ("Smith Barney"). The IRS was seeking to levy on the IRA accounts in order to satisfy the debtor's outstanding tax liabilities. On June 9 or 10, 1994, the IRS mailed a notice of levy to Smith Barney, which was received on June 14, 1994. At all times before the levy, the funds in the IRA accounts totaled more than the outstanding tax liabilities. Pursuant to the notice of levy, Smith Barney believed the funds were to be released to the IRS by July 6, 1994.

On July 6, 1994, prior to Smith Barney releasing the funds to the IRS, the debtor filed a bankruptcy petition under Chapter 7 of the United States Bankruptcy Code in

order to prevent the IRS from levying upon his IRA accounts with Smith Barney. On August 26, 1994, realizing that certain liabilities were not dischargeable in the bankruptcy proceeding, the debtor requested the bankruptcy court to dismiss the petition. On September 8, 1994, [**4] at a hearing on the debtor's motion to dismiss, the bankruptcy court read a ruling into the record at approximately 11:00 a.m. dismissing the bankruptcy proceeding. A [*638] written order of dismissal followed, which was date-stamped by the Clerk's office at 2:01 p.m. and was docketed at 4:09 p.m. on the same day, September 8, 1994.

The IRS, after receiving the written order of dismissal, but prior to the docketing of the order, immediately filed a notice of federal tax lien in Broward County, Florida. The notice was date-stamped as filed at 2:32 p.m. on September 8, 1994.

On September 9, 1994, one day after the dismissal of his first bankruptcy proceeding, the debtor filed a second bankruptcy petition under Chapter 7 of the Bankruptcy Code. This second bankruptcy proceeding is currently before the Court. On September 9, 1994, the date of the present bankruptcy petition, the debtor owed the IRS over $ 500,000 as follows:

Tax Year	Tax	Interest	Penalty
1978	$ 5,167.80	$ 112,839.51	$ 11,046.84
1979	6,616.64	24,689.14	1,995.16
1983	14,122.36	42,422.62	21,627.50
1984	14,427.00	39,769.82	22,213.84
1985	19,038.00	44,801.70	27,319.26
1986	19,349.00	24,166.31	9,190.78
1987	14,296.00	21,590.90	17,076.40

Totals	$ 93,016.80	$ 310,280.00	$ 110,469.78

[**5] The debtor's IRA accounts with Smith Barney have been determined to be exempt from the debtor's bankruptcy estate pursuant to Florida Statutes §§ 222.21(2)(a) and 222.201.

On April 12, 1995, the debtor filed an adversary complaint to avoid liens and determine dischargeability of income taxes, which is the subject of the present cross-appeals. The adversary complaint sought to avoid the notices of federal tax liens recorded on September 20, 1991 in Washington, DC and on September 8, 1994 in Broward County, Florida. The adversary complaint also sought to have the debtor's 1978, 1979, 1983, 1984, 1985 and 1987 tax liabilities discharged.[5]

On September 22, 1995, a trial was held on the debtor's adversary complaint. Following the trial, [**6] the bankruptcy court entered its Memorandum Decision and Order, which is the current order on appeal. The bankruptcy court specifically held as follows: (1) the September 8, 1994 recording of a notice of federal tax lien violated the automatic stay provisions of 11 U.S.C. § 362, and is therefore avoided, because the IRS recorded the notice prior to the actual docketing of the written order of dismissal; (2) the September 20, 1991 notice of federal tax lien recorded in Washington, DC was ineffective, and therefore avoided, because the debtor was a resident of Florida; (3) the 1978, 1979 and 1987 taxes and interest are dischargeable but the 1983, 1984, 1985 and 1986 taxes and interest are not dischargeable; and (4) the penalties for all

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[5] The debtor has conceded from the beginning of the proceeding that the 1986 taxes and interest are dischargeable. The United States has not challenged the 1978, 1979, and 1987 tax liabilities, and the bankruptcy court discharged these liabilities in the Bankruptcy Order.

of the tax years at issue are dischargeable. The debtor appealed and the United States has cross-appealed.

Specifically, the debtor appeals the bankruptcy court's determination that the 1983, 1984 and 1985 taxes and interest are not dischargeable. The debtor asserts that the bankruptcy court should not have tolled the time periods for dischargeability for the time period during the debtor's first bankruptcy proceeding.

The United States appeals the [**7] bankruptcy court's determination that the debtor was a resident of Florida on September 20, 1991. The United States also appeals the bankruptcy court's determination that the recording of the September 8, 1994 notice of federal tax lien violated the automatic stay. Finally, the United States requests the Court to remand the matter to the bankruptcy court to determine the rights of the parties to the funds held in the IRA accounts with Smith Barney which are subject to the notice of levy.

The Court will address each of the issues on appeal in turn.

[*639] II. STANDARD OF REVIEW

The Bankruptcy Court's findings of fact will not be set aside unless clearly erroneous. Fed.R.Bankr.P. 8013; Green Tree Acceptance, Inc. v. Calvert (In re Calvert), 907 F.2d 1069, 1071 (11th Cir. 1990). Equitable determinations by the bankruptcy court are reviewed for abuse of discretion, In re Red Carpet Corp., 902 F.2d 883 (11th Cir. 1990), while conclusions of law are reviewed by the District Court *de novo*. In re Chase & Sanborn Corp., 904 F.2d 588 (11th Cir. 1990); In re Sublett, 895 F.2d 1381 (11th Cir. 1990).

III. DISCUSSION

A. Tolling of Time Periods for Prior Bankruptcy Filing [**8]

Pursuant to section 523(a)(1)(A) and 507(a)(8)(A)(ii) of the Bankruptcy Code, income tax liabilities which were assessed within 240 days, plus any time plus 30 days during which an offer in compromise was pending, of the date of the filing of the petition, are excepted from discharge. Here, the debtor's 1983, 1984 and 1985 taxes were assessed within such time period prior to the initial July 6, 1994 bankruptcy petition, and thus, were excepted from discharge.[6] Consequently, the debtor requested the bankruptcy court to dismiss the original bankruptcy proceeding to allow the debtor to file a new bankruptcy petition.

The debtor filed a new bankruptcy petition on September 9, 1994, which was filed more than 240 days (plus the additional time within which the debtor had an offer of compromise pending before the IRS plus 30 days) after the debtor's 1983, 1984 and [**9] 1985 taxes were assessed. Therefore, if the debtor had not filed the original bankruptcy proceeding, the debtor's 1983, 1984 and 1985 tax liabilities would have been dischargeable in the present bankruptcy proceeding.[7] The question before the Court, however, is whether the time period for

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[6] The parties do not dispute the dates that the IRS assessed the taxes or the time period during which the debtor had an offer in compromise pending.

[7] However, if the debtor had not filed the original bankruptcy petition, the IRS would have had ample opportunity to levy upon the debtor's IRA accounts with Smith Barney to satisfy the entire outstanding tax liabilities.

determining the dischargeability of tax liabilities was tolled during the pendency of the prior bankruptcy proceeding.

The Court notes that there is a split among the courts as to whether such time periods are tolled. Compare Waugh v. Internal Revenue Serv. (In re Waugh), 109 F.3d 489 (8th Cir.1997), cert. denied, 118 S. Ct. 80 (1997) (finding the time periods are suspended while the debtor was in bankruptcy) with Quenzer v. United States (In re Quenzer), 19 F.3d 163 (5th Cir.1993) (finding that [**10] the time periods are not suspended). The majority of cases, relying upon 11 U.S.C. § 108(c) and 26 U.S.C. 6503(b), hold that the time periods are suspended during the pendency of the debtor's prior bankruptcy proceedings and for an additional six months thereafter. See Simmons v. United States, 227 B.R. 338, 340 (Bankr. N.D. Ga. 1998) (listing cases). The Eleventh Circuit has not yet reached the present issue. For the reasons that follow, the Court will follow the majority of cases to decide the present issue.

While the Bankruptcy Code does not contain any provisions which explicitly suspend the dischargeability time periods while a debtor is engaged in bankruptcy proceedings, 11 U.S.C. § 108(c) provides as follows:

> Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under [*640] section 1201 or 1301 of this title, and such period has not expired before the date of the filing of [**11] the petition, then such period does not expire until the later of--

> (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> (2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

11 U.S.C. § 108(c) (emphasis added). The United States' argument is that Section 108(c) incorporates 26 U.S.C. § 6503(h), which provides as follows:

> (h) Cases under title 11 of the United States Code.-- The running of the period of limitations provided in section 6501 or 6502 on the making of assessments or collection shall, in a case under title 11 of the United States Code, be suspended for the period during which the Secretary is prohibited by reason of such case from making the assessment or from collecting and--
>
> (1) for assessment, 60 days thereafter, and
>
> (2) for collection, 6 months thereafter.

(Emphasis added). In Waugh, the court addressed these two provisions and noted as follows:

> Waugh urges this Court to determine that because section [**12] 108(c) applies only to "nonbankruptcy law," the statute does not act to suspend the priority period of section 507(a)(8)(A)(i), which is itself part of the Bankruptcy Code. We recognize that "the plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at

> odds with the intentions of its drafters.'" United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242, 109 S. Ct. 1026, 1031, 103 L. Ed. 2d 290 (1989)(alteration in original)(quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571, 102 S. Ct. 3245, 3250, 73 L. Ed. 2d 973 (1982)); accord Missouri v. L.J. O'Neill Shoe Co. (In re L.J. O'Neill Shoe Co.), 64 F.3d 1146, 1150 (8th Cir.1995). However, we conclude that this is such a "rare case." If we applied the plain meaning of section 108(c) and held that the priority period of section 507(a)(8)(A)(i) is not suspended during bankruptcy proceedings, Congress's intent to afford the IRS a three-year priority period for the collection of taxes certainly would be frustrated. Therefore, we conclude that the three-year priority period of section 507(a)(8)(A)(i) is suspended [**13] by 11 U.S.C. § 108(c) and 26 U.S.C. § 6503(b) and (h), for the time that the automatic stay prevents the IRS from collecting outstanding tax debts.

Waugh, 109 F.3d at 492-493. In support of its decision, the court cited to the legislative history of section 108(c), which supports the position that Congress intended section 108(c) to incorporate section 6503(h) into the Bankruptcy Code:

> In the case of Federal tax liabilities, the Internal Revenue Code suspends the statute of limitations on a tax liability of a taxpayer from running while his assets are in the control or custody of a court and for 6 months thereafter (sec.6503(b) of the Code). The amendment applies this rule in a title 11 proceeding. Accordingly, the statute of limitations on collection of a nondischargeable Federal tax liability of a debtor will resume running after 6 months following the end of the period during which the debtor's assets are in the control or custody of the bankruptcy court. This rule will

> provide the Internal Revenue Service adequate time to collect nondischargeable taxes following the end of the title 11 proceedings.

Id. at 493 (quoting S.Rep. No. 95-989, at [**14] 31 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5816-17).

[*641] The court finds Waugh, and the other cases following the majority position, to be persuasive and will therefore follow the majority position. The Court notes that the present case would be the precise case that Congress was concerned about when it intended for the IRS to have adequate time to collect nondischargeable taxes following the end of a bankruptcy proceeding. Here, the original bankruptcy was dismissed on September 8, 1994 and the second bankruptcy was filed the next day on September 9, 1994. Clearly, the IRS did not have ample opportunity to collect the outstanding tax liabilities between the two bankruptcy proceedings, and the IRS' efforts to collect the debtor's liabilities were certainly frustrated by the debtor's successive bankruptcy filings. Accordingly, the Court affirms the bankruptcy court's holding that the debtor's 1983, 1984 and 1985 taxes and interest are excepted from discharge.[8][**15]

B. The September 20, 1991 notice was not effective

Pursuant to 26 U.S.C. § 6323(f)(2)(B), the proper place for filing a notice of federal tax lien, "in the case of personal property, whether tangible or intangible, [is] at the

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[8] Because of the Court's holding that the time periods were suspended by section 108(c) and 6503(h), the Court does not need to reach the bankruptcy court's basis, under 11 U.S.C. 105(c), for holding the 1983, 1984 and 1985 taxes and interest are nondischargeable.

residence of the taxpayer at the time the notice of lien is filed . . . and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia." In the present case, the bankruptcy court found that the debtor's residence at the time of the filing of the September 20, 1991 notice was Florida. Therefore, the bankruptcy court found that the notice was invalid. The United States argues that the notice was correctly filed in Washington, D.C. The Court disagrees.

"Section 6323(f)(2)(B) . . . was added by the Federal Tax Lien Act of 1966 (Pub.L.No.89-719) to clarify 'existing law by providing specific rules with respect to the place of filing a notice of a Federal tax lien....'" Corwin Consultants, Inc. v. Interpublic Group of Companies, Inc., 512 F.2d 605, 608 (2d Cir.1975) (quoting 3 U.S.Code Cong. & Admin.News, 89th Cong., 2d Sess.1966, at p. 3732 (S.Rep.No.1708)). "When the drafters added [**16] section 6323(f)(2)(B), they deliberately avoided using domicile, however, and chose residence instead 'because of the difficulty in determining a person's domicile, based as it is on (among other things) his state of mind.'" Id. (quoting 3 U.S.Code Cong. & Admin.News, supra, at p. 3732). A principal purpose of the 1966 Tax Lien Act in using "residence" filing was to "increase the likelihood that creditors, generally, will receive notice as to taxpayers' standing with the Government." Id. at 610 (quoting 3 U.S.Code Cong. & Admin.News, 89th Cong., 2d Sess.1966, at 3731); see also Urban Industries, Inc. of Kentucky v. Thevis, 670 F.2d 981 (11th Cir.1982). A person can have more than one residence but only one domicile. Urban Industries, 670 F.2d at 986 (citing Corwin, 512 F.2d 605 at 610).

The residence of a delinquent taxpayer is a question of fact to be determined by various criteria, including: the taxpayer's physical presence as an inhabitant and not a mere transient; the permanence of that presence; the

reason for his presence; and the existence of other residences. Corwin, 512 F.2d at 610; see also In re Carousel International Corp., 219 B.R. 807, 809 (C.D. [**17] Ill. 1997). In general, for this statute, where a taxpayer resides is where he dwells for a significant amount of time and where creditors would be most likely to look for him. Corwin, 512 F.2d at 610.

In the present case, the bankruptcy court found that the debtor was a Florida resident on September 20, 1991. In particular, the bankruptcy court found as follows:

> [*642] Upon review of the evidence, I find that the Debtor has been a resident of Florida since he was reassigned to Miami by Pan Am in April 1991. At that time, he was registered in a training course and filed a W-4 with his employer listing his Florida address. The Debtor has spent a great majority of his time traveling with Pan Am and "living out of a suitcase," but in 1991 the Debtor spent more than 100 days in Florida. . . . The IRS has not produced any evidence that the Debtor claimed any residency other than Florida after April 1991, or that Mr. Saunders spent more time anywhere other than Florida.

Bankruptcy Order at 4. The Court holds that the bankruptcy court's finding that the debtor was a Florida resident on September 20, 1991 was not clearly erroneous.[9] [**18]

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[9] The United States argues that the evidence was not sufficient to establish that the debtor was a residence of Florida. It is clear, however, that the debtor was no longer a resident of Germany, even if the IRS was unaware of this fact. Moreover, if the debtor was not a resident of Florida, then the only other alternative residence would have been New York. However, the IRS also did not file a notice of federal tax lien in New York. Finally, the Court agrees with

Having concluded that the debtor was a Florida resident on September 20, 1991, the next question presented is whether the IRS can still file the notice in Washington, D.C. if the only means available to the IRS indicates that the debtor still resided outside the United States. More specifically, the question is whether the debtor was required to notify the IRS that he had changed his residence to Florida. The Court finds that the Internal Revenue Code does not provide for such a requirement.

The cases relied upon by the United States all involve instances where the IRS mailed notices of deficiencies of taxes to taxpayers under 26 U.S.C. § 6212. Section 6212 requires that a notice of deficiency be mailed to the taxpayer's "last known address." Implicit in this requirement is that the taxpayer must notify the IRS of any new address or the IRS is permitted to mail a notice of deficiency to the taxpayer's last known address, even if the taxpayer no longer lives there. See, e.g., Gaw v. Commissioner, 310 U.S. App. D.C. 160, 45 F.3d 461 (D.C. Cir. 1995). Unlike section 6212, however, section 6523(f)(2)(B) does not provide that the IRS may file a notice of federal tax lien in the taxpayer's [**19] "[last known] residence." The Court declines to read such additional language into the statute. But see Corwin, 512 F.2d 605 at 611 (concurring opinion) ("The interpretation of "residence" as meaning "last known residence" is in accord with other provisions of the Code, see, e.g., 26 U.S.C. §§ 6212 & 6303."). Rather, the notice of federal tax

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the United States' argument that events occurring after September 20, 1991 are not relevant for determining the debtor's residence on September 20, 1991. However, ignoring these additional events, the Court holds that the bankruptcy court's finding that the debtor was a Florida resident on September 20, 1991 was not clearly erroneous.

lien must be filed in the taxpayer's residence.

Here, the debtor's residence on September 20, 1991 was in Florida. While the Court is sympathetic to the United States' argument that it would have been difficult to ascertain the debtor's residence in September 1991, it would have been just as difficult for creditors, especially creditors in Florida, to have located a notice of federal tax lien filed in Washington, D.C. Therefore, the Court affirms the bankruptcy court's holding that the September 20, 1991 notice of federal tax lien filed in Washington, D.C. was not valid.

C. The September 8, 1994 notice was valid and not avoidable.

The next question presented is whether the automatic stay from the debtor's prior bankruptcy was lifted prior to 2:32 p.m., on September 8, 1994, when the IRS filed its notice of federal tax lien in Broward County, [**20] Florida. 11 U.S.C. § 362(c)(2) provides that the automatic [*643] stay was in effect until the prior bankruptcy case was "dismissed." Therefore, the Court must decide when the prior bankruptcy case was actually "dismissed" for purposes of dissolving the automatic stay.

The United States argues that the notice of federal tax lien did not violate the automatic stay if the bankruptcy case was dismissed by the bankruptcy court when the court gave its ruling from the bench, or when the bankruptcy court signed its order dismissing the action, or when the written order was stamped by the clerk of the court. The debtor argues that the case was not dismissed until the clerk officially docketed the written order at 4:09 p.m. on the computer system, and therefore, the recording of the notice of federal tax lien at 2:32 p.m. violated the automatic stay.

After considering the arguments of the parties, the bankruptcy court held that the notice of federal tax lien filed on September 8, 1994 violated the automatic stay provisions of section 362 as follows:

> Federal Rule of Bankruptcy Procedure 9021 provides that "[a] judgment is effective when entered as provided in Rule 5003." Rule 5003 requires [**21] the Clerk to enter on the official docket "each judgment, order, and activity in that case." The term "judgment" as used in this rule means "any appealable order". F.R.B.P. 9001(7). Therefore, any appealable order becomes effective once entered on the Court's official docket.
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> The Dismissal Order is an appealable final order. Consequently, following the plain meaning of the above rules, the notice of federal tax lien, which was filed prior to the actual docketing of the Dismissal Orders, was filed when the automatic stay was still in effect. See, In re Weston, 101 B.R. 202 (Bankr. E.D. Cal. 1989) (automatic stay terminated when dismissal order entered on docket), aff'd, 123 B.R. 466 (9th Cir. BAP 1991). See also, In re Beatty, 162 B.R. 853 (9th Cir. BAP 1994) (effective and operative date of order is date of entry into docket); In re Rebeor, 89 B.R. 314 (Bankr. N.D.N.Y. 1988) (oral ruling converting case was not effective until entered on docket by clerk).

Bankruptcy Order at 6.

Initially, the Court has reviewed the cases cited by the bankruptcy court and notes that none of these cases squarely addressed the subject issue in the present action. At best, the [**22] cited passages in these cases are merely dicta. However, for every case that states that an order must be officially docketed to be effective, the

Court has also found a separate case indicating that a dismissal is effective when dismissed on the record or when the order was entered. See, e.g., In re Lashley, 825 F.2d 362, 363 (11th Cir.1987) (per curiam) ("On September 22, 1986, the bankruptcy court entered an order dismissing the case. The bankruptcy court also specifically dissolved and vacated the § 362(a) automatic stay."); see also Fish Market Nominee Corp. v. Pelofsky, 72 F.3d 4, 6 (1st Cir.1995) ("But the stay under section 362(a) itself expired as soon as the judgment dismissing the chapter 11 case was entered, § 11 U.S.C. 362(c)"); In re De Jesus Saez, 721 F.2d 848, 851 (1st Cir.1983) ("We begin by noting that, unless extended by Rule 762 or in some other manner, an automatic stay must plainly terminate upon dismissal of the petition giving rise to it."). However, these additional cases also did not squarely address the subject issue in the present action. As far as the court can ascertain, the present issue is an issue of first impression.

More importantly, [**23] a review of the applicable rules also does not support the bankruptcy court's holding. Rule 5003 provides in pertinent part as follows:

> (a) Bankruptcy dockets. The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of [*644] the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

The Court notes that Rule 5003 is unclear as to which "entry" is required to be shown on the docket. Docket sheets routinely reflect both the date the order was actually entered by the Judge and the date the order was docketed. Of course the effective date listed on the

docket sheet is always the actual date of the Order (or the date a pleading was actually filed) and not the actual date of docketing, which many times occurs a day or several days later.

Regardless of which entry is referenced, however, it does not necessarily follow from these rules that it is the task of docketing the order that makes the order effective. Rather, common sense dictates that a court's order is effective when a court enters such an [**24] order. If a court orders a case dismissed, then the case is dismissed. To hold otherwise would permit the clerk's office to misplace an order and prevent the judge's order from becoming effective. Parties should be able to reasonably rely on a written order, signed by a Judge, that the party has actually received, even if this Order does not get docketed. This is exactly what occurred here. The IRS physically had in its revenue officer's hands, a signed order from the bankruptcy court with a date stamp of 2:01 p.m., September 8, 1994. Relying upon this signed order, which caused the automatic stay to no longer be in effect, the IRS immediately filed a notice of federal tax lien. The Court holds that the filing of this notice of federal of tax lien did not violate the automatic stay.

Therefore, the Court holds that the prior bankruptcy case was dismissed when the bankruptcy court entered its order dismissing the case.[10] This dismissal occurred

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[10] The Court does not need to reach the question whether the bankruptcy court's oral dismissal operated to cease the automatic stay, because a written order was also entered and date-stamped prior to the IRS' filing of the subject notice of federal tax lien. Compare In re Tim Wargo & Sons, Inc., 107 B.R. 622, 625 (Bankr. E.D. Ark.1989) and In re Rebeor, 89 B.R. 314, 320 (Bankr. N.D.N.Y. 1988), which found that a court's oral ruling is not operative if it is a final order, with In re Nail, 195 B.R. 922 (Bankr. N.D. Ala.1996), which disagreed

prior to 2:32 p.m. on September 8, 1994, and consequently, the automatic stay was no longer in effect when the IRS filed its notice of federal tax lien. Accordingly, the Court reverses the bankruptcy court's holding that the September 8, 1994 [**25] notice of federal tax lien violated the automatic stay.

D. Determination of the Rights of the Parties

The United States argues that the bankruptcy court failed to address the rights of the parties with respect to the IRA accounts at Smith Barney. The debtor agrees that the Bankruptcy Order does not address this issue; however, the debtor argues that the issue was not preserved in the pretrial order and the issue was not raised by the [**26] United States in its pleadings. Because the bankruptcy court has not addressed the issue, including whether the issue was even preserved for the bankruptcy court to address, and in light of the court's prior rulings which clearly affect the parties rights to the IRA accounts with Smith Barney, the Court will remand the matter to the bankruptcy court to address.

IV. CONCLUSION

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Bankruptcy Court's Memorandum Decision and Order, dated January 26, 1996, is hereby **AFFIRMED** in part and **REVERSED** in part as follows:

> A. The bankruptcy court's holding that the debtor's 1983, 1984 and 1985 taxes and interest are excepted

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with the prior cases.

from discharge is hereby **AFFIRMED**;

[*645] B. The bankruptcy court's holding that the September 20, 1991 notice of federal tax lien filed in Washington, D.C. was not valid is hereby **AFFIRMED**;

C. The bankruptcy court's holding that the September 8, 1994 notice of federal tax lien violated the automatic stay is hereby **REVERSED**; and

2. This case is **REMANDED** to the Bankruptcy Court to enter whatever orders are necessary consistent with the above rulings, [**27] including addressing the rights of the parties with respect to the IRA accounts at Smith Barney;

3. The Clerk of this Court is directed to deny all pending motions as moot; and

4. This case is closed.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 25th day of February, 1999.

s/WILLIAM P. DIMITROULEAS
United States District Judge

(DO NOT PUBLISH)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-12737

D. C. Docket Nos. 96-06236-CV-WPD
94-23489-BKC-RB

JERALD D. SAUNDERS,

Plaintiff-Appellant,

versus

MARIKA TOLZ,
UNITED STATES OF AMERICA,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(October 4, 2001)

Before [ROSEMARY] BARKETT and [STANLEY] MARCUS, Circuit Judges, and O'KELLEY*, District Judge.

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*The Honorable William C. O'Kelley, U.S. District Court Judge for the Northern District of Georgia, sitting by designation.

PER CURIAM:

AFFIRMED. See 11th Cir. R. 36-1. [1]

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1 11th Cir. R. 36-1 provides:

When the court determines that any of the following circumstances exist:

(a) judgment of the district court is based on findings of fact that are not clearly erroneous;

(b) the evidence in support of a jury verdict is sufficient;

(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;

(d) summary judgment, directed verdict, or judgment on the pleadings is supported by the record.

(e) judgment has been entered without a reversible error of law; and an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.